

BURLINGTON HOUSING BOARD OF REVIEW

Tuesday, September 6, 2022

7:00 p.m.

The meeting will be REMOTE ONLY. You can join the meeting via Zoom:

<https://zoom.us/j/93863626875>

Or One tap mobile:

US: +13017158592,,93863626875# or +13092053325,,93863626875#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 301 715 8592 or +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 929 205 6099 or +1 564 217 2000 or +1 669 444 9171 or +1 669 900 6833 or +1 719 359 4580 or +1 253 215 8782 or +1 346 248 7799 or +1 386 347 5053

Webinar ID: 938 6362 6875

International numbers available: <https://zoom.us/u/acGVKKS8Ek>

AGENDA

1. Jesse Zboray (tenant); Connolly Qualified Domestic Trust/Full Circle Property Management (landlord) (security deposit case) re: 168 So. Champlain St (postponed from meeting of 8/22/22)
2. Jackson Bond, Nicholas Levine, Joshua Barski, Kyle Smelser (tenants); David Palmer (landlord) (security deposit case) re: 366 Pearl St.
3. Francesca Carasi-Schwartz, Kai Boyd (tenants); Budco Development LLC (landlord) (security deposit case) re: 47 So. Williams St, Apt. 311
4. Juliette Fredericks, Erin Tevnan, Julia Hart (tenants); Rich Bassett (landlord) (security deposit case) re: 117 No. Winooski Ave.
5. Emma Sopchak, Emily Saunders, Hannah Gould (tenants); Diamond Apartments LLC (landlord) (security deposit case) re: 452 So. Union St, Unit 2

Rev. 8/18/22

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

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7:00 p.m.

The meeting will be REMOTE ONLY. You can join the meeting via Zoom:

<https://zoom.us/j/93863626875>

Minutes

Board Members present: Charlie Gliserman, Josh Wronski, and Olivia Taylor. Charlie Gliserman left the meeting at 7:30pm. Josh Wronski and Olivia Taylor then served as Hearing Officers.

Staff present: Lisa Jones

1. Jesse Zboray (tenant); Connolly Qualified Domestic Trust/Full Circle Property Management (landlord) (security deposit case) re: 168 So. Champlain St (postponed from meeting of 8/22/22)
Present were Jesse Zboray and Stephanie Gilbert. Both parties were sworn in. The Board took evidence and testimony from both parties. The hearing was closed.
2. Jackson Bond, Nicholas Levine, Joshua Barski, Kyle Smelser (tenants); David Palmer (landlord) (security deposit case) re: 366 Pearl St.
The case was postponed to Sept. 19, 2022 at the landlord's request.
3. Francesca Carasi-Schwartz, Kai Boyd (tenants); Budco Development LLC (landlord) (security deposit case) re: 47 So. Williams St, Apt. 311
Present were Francesca Carasi-Schwartz and Stephanie Gilbert. Both parties were sworn in. Both parties presented their evidence and testimony. The hearing was closed.
4. Juliette Fredericks, Erin Tevnan, Julia Hart (tenants); Rich Bassett (landlord) (security deposit case) re: 117 No. Winooski Ave.
The case was postponed until Sept. 19, 2022 at the landlord's request.
5. Emma Sopchak, Emily Saunders, Hannah Gould (tenants); Diamond Apartments LLC (landlord) (security deposit case) re: 452 So. Union St, Unit 2
Present were Hannah Gould, Emma Sopchak, Emily Saunders, Benjamin Gould, Mike Shea and Elmira Shea. All parties were sworn in. Both parties presented their evidence and testimony. The hearing was closed.

The meeting was adjourned at 8:40 p.m.

The Board deliberated in private.



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11
Burlington, Vermont 05401
(802) 865-7122

**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Jesse Zboray
Full Circle Property Management

**CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of JESSE ZBORAY)
Regarding Withholding of Security)
Deposit by CONNOLLY QUALIFIED) Security Deposit Appeal
DOMESTIC TRUST for Rental Unit at)
168 So. Champlain Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 6, 2022; the meeting was held remotely via Zoom. Board Members Charlie Gliserman, Olivia Taylor and Josh Wronski were present. Petitioner Jesse Zboray was present and testified. Respondent Connolly Qualified Domestic Trust was represented at the hearing by Stephanie Gilbert who testified.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

1. Respondent Connolly Qualified Domestic Trust is the owner of a rental unit, 168 So. Champlain Street, in the City of Burlington which is the subject of these proceedings. Stephanie Gilbert from Full Circle Property Management (“Full Circle”) manages the property.
2. Petitioner Jesse Zboray moved into the rental unit on June 1, 2021 under the terms of a written lease. Monthly rent was \$1650.00.
3. Petitioner paid a security deposit of \$1650.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 25, 2022.

5. On June 6, 2022, respondent sent a written statement to petitioner in accordance with ordinance requirements. Said statement informed petitioner that \$140.00 of the deposit was being withheld for cleaning charges. Respondent returned \$1510.99 of the deposit to petitioner.

6. Interest in the amount of \$0.99 was credited to the deposit.

7. Petitioner disputed the deduction of \$140 for cleaning charges. Petitioner thoroughly cleaned the apartment before vacating it, following the move-out checklist provided by respondent, including pulling out the refrigerator and cleaning underneath it. In addition, petitioner wiped everything down and cleaned out the cabinets and refrigerator. After petitioner moved out, a woman hired by respondent spent 4 hours in the apartment cleaning. The cleaning invoice indicated the baseboards and wall were dusted and wiped down so they could be painted. In addition, the invoice indicated there were items in the kitchen drawers and cabinets that needed to be removed so they could be wiped down. Lastly, the invoice indicates the oven needed to be sprayed and the floor under the oven and refrigerator were very dirty. Videos of the apartment submitted by petitioner indicate it was clean and in good condition.

8. Petitioner also argued that the deposit was willfully withheld and he requested double damages. Petitioner argued that respondent had acted in bad faith during his entire tenancy. He argued that the cleaning invoice was fabricated. Stephanie Gilbert denied willfully withholding the deposit and believed she was very fair with respect to the deduction made. Ms. Gilbert testified that she paid a woman to clean the apartment so that it was ready for the next tenant; Ms. Gilbert testified that she has no interest in paying a vendor if she doesn't have to.

Conclusions of Law

9. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

10. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

11. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Proper notice was provided.

12. Based on the evidence and testimony, the Board concludes that the deduction of \$140.00 for cleaning was not proper as the cleaning done was part of normal wear and tear.

13. Petitioner argued that the deposit was willfully withheld. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondents' failure to return the security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). The Board concludes the deposit was not willfully withheld. Full Circle hired a woman to clean the apartment after petitioner moved out, believed the need to clean was attributable to petitioner and believed the deduction was very fair and reasonable.

Order

Accordingly, it is hereby ORDERED:

14. Petitioner Jesse Zboray is entitled to recover from respondent Connolly Qualified Domestic Trust the following amounts:

- a) \$140.00 of the principal amount of the deposit improperly withheld after June 8, 2022; and
- b) Additional interest of \$0.001 per day from June 9, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 17th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Taylor
Olivia Taylor

/s/ Josh Wronski
Josh Wronski



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

(802) 865-7122

**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Francesca Carasi-Schwartz
Full Circle Property Management

**CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of FRANCESCA)
CARASI-SCHWARTZ Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
BUDCO DEVELOPMENT, LLC for)
Rental Unit at 47 S. Williams St., Apt. 311)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 6, 2022; the meeting was held remotely via Zoom. For purposes of expedition, Board Members Olivia Taylor and Josh Wronski were appointed Hearing Officers to hear and decide the above – referenced matter. Petitioner Francesca Carasi-Schwartz was present and testified. Respondent Budco Development, Inc., was represented at the hearing by Stephanie Gilbert who testified.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

1. Respondent Budco Development, LLC, is the owner of a rental unit, 47 S. Williams Street, Apt. 311, in the City of Burlington which is the subject of these proceedings. Stephanie Gilbert from Full Circle Property Management (“Full Circle”) manages the property.
2. Petitioner and Kai Boyd moved into the rental unit on June 1, 2020 under the terms of a written lease. Monthly rent was \$1550.00.
3. Petitioner and Kai Boyd paid a security deposit of \$1550.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 23, 2022.

5. On June 6, 2022, respondent returned the deposit to petitioner and Kai Boyd at petitioner's forwarding address. The accompanying statement noted no deductions from the deposit. Respondent returned \$1552.00 to petitioner. The check was made payable to petitioner and Kai Boyd. Petitioner did not receive the statement. At the time of the hearing, the check and statement had not been returned to respondent by the post office as undeliverable.

6. Between June 17 and June 30, petitioner and Addy Nunez (a property manager at Full Circle) emailed back and forth about the missing check and having a new check issued. Full Circle was reluctant to issue a new check when the whereabouts of the first check was unknown. Petitioner was frustrated that a new check couldn't just be issued. Finally, on June 30, Full Circle agreed to issue a new check to petitioner which was to be picked up at their office on July 1.

7. On July 1, 2022, petitioner picked up a new check at Full Circle's office. The check was made payable to petitioner and Kai Boyd. When petitioner tried to deposit the check into her account, the bank told her both parties needed to sign the check in order to cash or deposit it.

8. On July 3, 2022, petitioner emailed Full Circle again and told them she was unable to deposit the check because it was made payable to her and Kai Boyd. Petitioner explained she was unable to have Kai Boyd sign the check. Petitioner requested that a new check, made payable to her alone, be mailed to her as soon as possible. Addy Nunez replied that in order for a new check to be issued, petitioner would need to return the check and pay a stop payment fee of \$36.00. Petitioner stopped communicating with Full Circle after receiving Addy Nunez's reply because she was frustrated about having to fix what she believed were errors made by Full Circle. Rather, petitioner filed a request before this Board to hear the dispute.

9. At the time of the hearing, the check made payable to petitioner and Kai Boyd that was issued on June 30, and picked up by petitioner on July 1, was still in petitioner's possession. Stephanie Gilbert stated that in order to issue a new check, petitioner either needed to return the check issued on June 30 or to pay a stop payment fee on it.

10. Petitioner argued that the deposit was willfully withheld and requested that respondent be ordered to pay double damages. The basis of petitioner's argument is that respondent has not returned the deposit and that respondent callously disregarded her requests that a new check be issued. Stephanie Gilbert denied that the deposit was willfully withheld, stating that Full Circle had, in fact, been trying to return the deposit to petitioner; then, petitioner stopped communicating with them.

Conclusions of Law

11. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

12. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

13. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of

Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Respondent returned the deposit with a statement to petitioner in accordance with ordinance requirements. However, the check and statement were never delivered to petitioner, and at the time of the hearing, had not been returned to respondent by the post office as undeliverable. The Hearing Officers conclude that respondent followed the ordinance, and through no fault of theirs, the check and statement were lost in the mail.

14. There is no dispute that petitioner and Kai Boyd are entitled to the return of the full deposit, plus interest – there were no deductions from the deposit. Respondent tried to return the deposit twice, but the first check was lost in the mail and petitioner was unable to cash or deposit the second check. The second check is still in petitioner's possession. Respondent is ready to issue another check as soon as the check in petitioner's possession is returned to them or petitioner pays a stop payment fee. The Hearing Officers conclude the check in petitioner's possession must be returned to Full Circle and upon receipt of the check respondent must immediately issue a new check and will so order.

15. Petitioner argued that the deposit was willfully withheld. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondents' failure to

return the security deposit was willful. As the Superior Court has recently held, “willfully” for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). The Hearing Officers conclude the deposit was not willfully withheld. Respondent returned the deposit and statement to petitioner on June 6. When respondent learned the deposit had not been received, they issued a new check which petitioner picked up at the offices of Full Circle. Respondent has been attempting to return the deposit in good faith.

Order

Accordingly, it is hereby ORDERED:

16. Petitioner Francesca Carasi-Schwartz must return the check issued on June 30, 2022 to Full Circle by certified mail.

17. Upon Full Circle’s receipt of the check issued on June 30, 2022, respondent must immediately issue a check in the amount of \$1552.00 (the full amount of the deposit plus interest) made payable to Francesca Carasi-Schwartz and mail it by certified mail to Francesca Carasi-Schwartz.

DATED at Burlington, Vermont this 19th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Olivia Taylor
Olivia Taylor
Hearing Officer

/s/ Josh Wronski
Josh Wronski
Hearing Officer



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

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**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

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Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 12/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk

Betsy McGavisk
Board Chair

cc: Hannah Gould (for all tenants)
Diamond Apartments LLC

**CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of HANNAH GOULD,)
EMMA SOPCHAK and EMILY)
SAUNDERS Regarding Withholding of) Security Deposit Appeal
Security Deposit by DIAMOND)
APARTMENTS, LLC for Rental Unit at)
452 South Union St., Unit 2)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 6, 2022; the meeting was held remotely via Zoom. For purposes of expedition, Board Members Olivia Taylor and Josh Wronski were appointed Hearing Officers to hear and decide the above – referenced matter. Petitioners Hannah Gould, Emma Sopchak and Emily Saunders were present and testified. Respondent Diamond Apartments, LLC was represented by Mike and Elmira Shea both of whom testified. Also appearing was Benjamin Gould, attorney for petitioners.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

1. Respondent Diamond Apartments, LLC, is the owner of a rental unit, 452 South Union Street, Unit 2, in the City of Burlington which is the subject of these proceedings. Mike and Elmira Shea manage the property.
2. Petitioners Hannah Gould and Emily Saunders moved into the rental unit on June 1, 2020 under the terms of a written lease; petitioner Emma Sopchak moved into the rental unit on June 1, 2021 when the lease was renewed. Monthly rent was \$2475.00.
3. Petitioners paid a security deposit of \$2425.00 to respondent; Hannah Gould and Emily Saunders each paid a deposit of \$800.00. However, Emma Sopchak paid a deposit of

\$825 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners vacated the apartment on May 26, 2022.

5. On June 6, 2022, respondent sent each petitioner a written statement in accordance with ordinance requirements. Said statement itemized deductions of \$169.00 from each of petitioner's deposits. Interest in the amount of \$0.56 was credited to each deposit. Respondent returned \$631.56 to each petitioner. Mike and Elmira Shea acknowledged that Emma Sopchak should have received an additional \$25.00 since she paid a deposit of \$825.00, not \$800.00.

6. Both parties testified with respect to cleaning which appeared as a deduction of \$489.00 (\$163.00 each) on the itemized statement. After petitioners moved out, Elmira Shea inspected the apartment and found the cleanliness of it was not satisfactory. Consequently, Ms. Shea hired D&R Cleaning Services to clean the apartment. The invoice for cleaning was \$490.00: 15 hours of cleaning at a rate of \$30/hour plus \$40 to clean the oven. Prior to moving out petitioners received information from respondent related to their expectations of tenants who are moving out. These expectations included information about cleaning, trash and repairs. Both the lease and informational sheet include leaving the premises thoroughly cleaned and in the same or better condition as at the beginning of the tenancy. Petitioners testified they thoroughly cleaned the apartment before moving out and tried to follow the cleaning expectations laid out in the move-out list. Petitioners also testified they cleaned the stove top and oven approximately 2 weeks before they moved out. Petitioners argued that the cleaning done by D&R Services was part of normal wear and tear. Photos submitted into evidence indicate the apartment was reasonably clean after petitioners out although there were some dirty

baseboards and cobwebs around some windows. However, the oven and stove were very dirty and the refrigerator needed to be wiped out.

7. Both parties testified with respect to trash removal which appeared as a deduction of \$18.00 (\$6.00 each) on the itemized statement. After petitioners moved out of the unit, respondents were charged an additional \$40 by Gauthier Trucking for extra trash left at the property. Respondent divided the cost between 7 tenants who moved out at the end of May. Petitioners acknowledged leaving trash, putting it at the garbage receptacles as usual. The cost of “normal refuse removal for ordinary household needs” was paid by respondent. However, the lease also provides that any extra trash removal costs will be the tenant’s responsibility. Further, the move out checklist states that all the tenants in the building will equally share in the cost of excess trash removal.

8. Petitioners argued that the deposit was willfully withheld and requested that respondent be ordered to pay double damages. Petitioners argued that respondent is a professional landlord who is aware of their responsibilities with respect to the withholding of a security deposit. Nonetheless, petitioners argued that respondent held them to a higher standard than what is allowed under city ordinance. Respondent argued that the house was not clean when petitioners moved out even though they provided petitioners with a move-out checklist of expectations. As the rental unit was not clean, respondent hired cleaners.

Conclusions of Law

9. The City of Burlington’s security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

10. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

11. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Proper notice was provided.

12. Based on the evidence and testimony, the Hearing Officers conclude that the stovetop, oven and refrigerator were dirty beyond what would be expected from normal wear and tear. The Hearing Officers conclude a reasonable deduction for cleaning the stovetop and oven was \$40 and a reasonable deduction to clean the refrigerator was \$15.00. However, other cleaning done in the apartment was part of normal wear and tear.

13. Based on the evidence and testimony, the Hearing Officers conclude the deduction for extra trash removal was proper and the deduction was reasonable. The lease provides that the

cost to remove any excess garbage at move-out will be charged to the tenants. Petitioners and other tenants in the building left excess trash after moving out. City ordinance provides that a security deposit can be withheld for nonpayment of charges owed directly to the landlord. Minimum Housing Code Sec. 18-120(a)(1). Consequently, the Hearing officers conclude the deduction is allowed under city ordinance.

14. Petitioner argued that the deposit was willfully withheld. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondents' failure to return the security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). The Hearing Officers conclude the deposit was not willfully withheld. Respondent returned \$1894.68 of the deposit with a statement to petitioners in a timely manner. The parties disagreed about the level of cleaning that needed to be done at the move-out, but those differences do not amount to the willful withholding of the deposit. And, the additional \$25 that was not returned to Emma Sopchak was an honest error.

Order

Accordingly, it is hereby ORDERED:

15. Petitioners are entitled to recover from respondent Diamond Apartments, LLC the following amounts:

a) Petitioner Hannah Gould is entitled to recover \$145 plus additional interest of \$0.001 per day from June 7, 2022 until such date as the amount improperly withheld is returned to her; and

b) Petitioner Emily Saunders is entitled to recover \$145.00 plus additional interest of \$0.001 per day from June 7, 2022 until such date as the amount improperly withheld is returned to her; and

c) Petitioner Emma Sopchak is entitled to recover \$170.00 plus additional interest of \$0.001 per day from June 7, 2022 until such date as the amount improperly withheld is returned to her.

DATED at Burlington, Vermont this 19th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Olivia Taylor
Olivia Taylor
Hearing Officer

/s/ Josh Wronski
Josh Wronski
Hearing Officer